

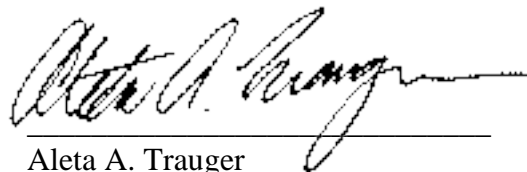


According to the petitioner's response, two hundred fifty nine (259) days elapsed before the petitioner filed a petition for state post-conviction relief (August 7, 2001 through April 22, 2002). The limitation period was tolled during the time that the petitioner had a properly filed post-conviction petition pending in the state courts. 28 U.S.C. § 2244(d)(2). The post-conviction proceedings concluded in the state courts on June 20, 2007, the date that the Tennessee Court of Criminal Appeals affirmed the denial of post-conviction relief.

Upon completion of the state post-conviction proceedings, the limitation period resumed, giving the petitioner one hundred six (365 - 259) days, or until October 4, 2007, in which to initiate the instant action. Scott v. Collins, 286 F.3d 923, 926 (6<sup>th</sup> Cir. 2002)(limitation period resumes at the point where it was tolled rather than starting anew). The petitioner avers that his habeas corpus petition was placed in the prison postal system on June 16, 2008, more than eight months after the limitation period had elapsed.

Accordingly, the Court finds that this action is untimely. The petitioner's petition (Docket Entry No. 1) is DENIED and this action is hereby DISMISSED. Rule 4, Rules - - - § 2254 Cases. Because this action is untimely, the petitioner is unable to make a substantial showing of the denial of a constitutional right. Therefore, should the petitioner file a timely Notice of Appeal, such Notice shall be treated as an application for Certificate of Appealability, 28 U.S.C. § 2253(c)(2), which shall NOT issue.

It is so ORDERED.

  
Aleta A. Trauger  
United States District Judge